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BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

IN AND FOR THE STATE OF UTAH

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DIVISION OF OIL, GAS AND
MINING,

:

PETITION

Petitioner,

:

v.

:

Docket No. 84-051

5M, INC.,

:

Cause No. ACT/053/002

Respondent.

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PARTIES

1. Petitioner, Division of Oil, Gas and Mining ("Division") is an agency of the State of Utah, created and existing pursuant to the authority granted in Section 40-6-1 et seq., Utah Code Annotated (1953, as amended).

2. Respondent, 5M, Inc., ("5M"), is a corporation created and existing under the laws of the State of Utah.

JURISDICTION

3. This is an action brought by the Division pursuant to the authority granted in the Utah Mined Land Reclamation Act ("Act"), Sections 40-8-7(1)(e) and 40-8-16(2)(b).

8. Subsequent to correspondence regarding the sufficiency of the mining and reclamation plan, by letter dated November 30, 1978, Ronald W. Daniels, Coordinator of Mined Land Development, informed 5M that the Notice of Intention for 5M's mining operation had been affirmed by the Board in their November 29, 1978 hearing. The Division was proceeding with the approval process and the final step prior to commencement of mining was the posting of a surety to ensure proper and complete reclamation. The Division determined that \$1,125.00 per acre with a five percent per year inflation factor accurately reflected the reclamation costs, yielding a total figure of \$291,720.00 for 60 acres over the 30 year life of the mine. The Division suggested the alternative of a Joint Ownership Time Certificate for \$67,500.00 in 1978 dollars with guaranteed a five percent per year interest yielding \$291,720.00 after 30 years.

9. No surety was received by the Division for the proposed 60 acre site.

10. By letter dated December 18, 1978, 5M informed the Division that the bonded area should be increased from 60 acres to 75 acres and stated that the Division's figure of \$1,125.00 per acre exceeded the assessed property value. 5M protested the five percent inflation factor and proposed a figure of \$250.00 per acre for the 75 acres for a total of \$18,750.00.

11. By letter dated December 26, 1978, the Division informed 5M that the proposed figure of \$250.00 per acre was brought before the Board on December 21, 1978 during the Executive Session and the

Board required additional information from 5M in order to make a decision on the sufficiency of the bond amount. By letter dated February 2, 1979, 5M supplied the additional information to the Division, clarifying that 75 acres for the site was correct and proposing that inflation not be accounted for in the bond amount.

12. 5M, through its attorney, contacted the Division by letter dated February 13, 1979 and agreed to the \$1,125.00 per acre bond amount. 5M submitted the new map delineating 75 acres for bonding on February 22, 1979.

13. During the February 1979 Board Hearing, in the Executive Session, the Board accepted the recommended bond amount of \$1,125.00 per acre for 75 acres with no inflation factor included, or a total of \$84,375.00.

14. On January 11, 1980, 5M submitted to the Division a copy of the 1979 annual progress report which indicated that operations were proceeding at the Silver Reef Mine in excess of two acres, yet the Division had not received a bond for the mine. Since the submittal of the 1979 annual progress report, there have been no subsequent operations reports or progress reports submitted for this mine as required by Section 40-8-15(2).

15. By letter dated February 22, 1980, the Division communicated to 5M that the bond had not been posted and informed the Company that, under the Act, the bond must be posted in order to continue mining operations. This letter requested an immediate response from 5M. No response was received by the Division from 5M.

16. On-site inspections of the minesite in August 1983 indicated that mine-related activities had been occurring on-site intermittently since 1978 and that the activities conducted did not accurately reflect what is contained in the Notice of Intention and the Mining and Reclamation Plan submitted by 5M which were conditionally approved by the Board in 1978.

17. By letter dated September 16, 1983, the Division again communicated to 5M that no mining activity at the Silver Reef site was to proceed until the bond had been posted. The Division requested the bond within 30 days of receipt of that letter, otherwise 5M would be considered in violation of Section 40-8-14 of the Act. No response was received by the Division from 5M.

18. By letter dated October 31, 1983, the Division again communicated to 5M that the bond had not been received and directed that the bond be posted by December 12, 1983.

19. By letter to the Division dated November 7, 1983, 5M, through its attorney, objected to the amount of the bond, among other things. The letter then proposed that 5M bond for a reduced acreage figure and conduct contemporaneous reclamation as the operation proceeded, with maximum acreage disturbed at any one time not to exceed 10 acres.

20. The Division agreed that an alternative method of bonding may be devised and suggested a meeting between the parties to that end. The Division again reminded 5M that no mining activities may occur without the Division first receiving a satisfactory reclamation bond for the disturbed area.

21. A Division memo to the file dated January 23, 1984 indicated that an on-site inspection of the Silver Reef Mine conducted January 20, 1984 by Division personnel showed that mine-related activities had continued to proceed despite no bond having been posted.

22. On February 7, 1984, a meeting was held between 5M and the Division to discuss the lack of a reclamation bond for the Silver Reef Mine and the apparent continuation of mining activities at the site. The Division again advised the Company that no further activity related to mining was to occur until the Division had received a satisfactory bond. The Division accepted 5M's proposal to bond on a contemporaneous reclamation basis wherein 5M would bond for the acreage disturbed to date plus the acreage to be disturbed within the permit term. However, the bond amount would have to be recalculated according to current bonding methods employed by the Division. Accordingly, the Company was to revise the mining and reclamation plan ("Form MR-1") to reflect the current operation, was to delineate the disturbed acreage, and was to submit a detailed estimation of the bond amount. This information was to have been submitted within 30 days of the date of the meeting for Division review March 8, 1984.

23. By telephone call to the Division on February 24, 1984, Jerry Glazier from 5M reaffirmed that the Company would be submitting within the 30 day time period a revised bond estimate and a map delineating current disturbance, upon which basis the bond was

calculated. 5M requested a delay in submitting the revised Form MR-1 due to uncertainty of the extent of near future operations. This delay request was granted provided that 5M would submit the revised Form MR-1 as soon as possible.

24. On March 12, 1984, 5M submitted to the Division a map delineating current disturbance and a detailed bond estimate, indicating 42.25 acres of current disturbance and an estimated \$55,210.00 reclamation surety bond in 1984 dollars.

25. By letter dated March 22, 1984, the Division communicated to 5M that the bond estimate had been reviewed, was acceptable for current disturbance and was to be posted immediately.

26. By letter dated May 1, 1984, the Division informed 5M that the bond had not been posted and was to be posted by May 15, 1984.

27. By telephone call May 15, 1984, Jerry Glazier from 5M requested a delay for posting the bond. By letter dated May 15, 1984, the Division affirmed the telephone conversation and extended the deadline for posting the bond to May 30, 1984. The bond had not been received by May 30, 1984 nor had it been received prior to the date of this petition.

COUNT I

28. Petitioner realleges and incorporates by reference, Paragraphs 1-24 of the Petition.

29. Insofar as 5M has failed to post a reclamation surety bond in the manner, form and amount specified by the Division, and has conducted mining operations at the Silver Reef Mine, 5M is in violation of Section 40-8-14(1), UCA, and Rule M-5 of the Mined Land Reclamation General Rules and Regulations ("Rules").

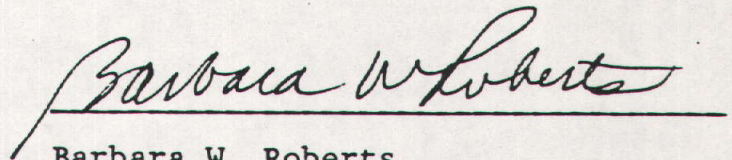
30. Insofar as 5M has failed to submit annual operations and progress reports to the Division for any and all mining related activities conducted at the Silver Reef Mine during 1980, 1981, 1982 and 1983, 5M is in violation of Section 40-8-15(2), UCA, and Rule M-8 of the Rules.

WHEREFORE, the Division prays as follows:

1. For an Order pursuant to Section 40-8-16(2)(b) immediately revoking the conditional approval of 5M's Notice of Intention and prohibiting further mining and mining-related activities at the Silver Reef Mine; and,
2. For an Order directing 5M to submit to the Division, within 30 days, a complete and accurate reclamation plan reflecting the current on-site conditions; and
3. For an Order directing 5M to provide to the Division, within 30 days, a reclamation surety bond in the amount of \$55,210.00 to ". . . guarantee the performance of the duty to reclaim the land affected in accordance with (the) approved (reclamation) plans" (Section 40-8-7[e]); and,

8. For such other and further relief as this Board deems proper.

DATED this 11th day of July, 1984.

A handwritten signature in cursive script, reading "Barbara W. Roberts", is written over a horizontal line.

Barbara W. Roberts

Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that I have this day served the foregoing instrument along with a copy of the Notice of Hearing upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, with postage prepaid, to Jerry Glazier, 5M, Inc., P. O. Box 752, Hurricane, Utah 84737, and Tim Anderson, Jones, Waldo, Holbrook & McDonough, One South Main Street, St. George, Utah 84770.

DATED this 12th day of July, 1984.

Marjorie L. Larson

Marjorie L. Larson

Secretary of the Board